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Application Number 09/488,470

Filing Date 01/20/2000

First Named Inventor SUNDARESAN, Neelakantan

Art Unit 2172

Examiner Name Hung Q. Pham

Attorney Docket Number AM9-99-0199

Total Number of Pages in This Submission

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Incomplete Application☐ Response to Missing Parts  
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Provisional Application☐ Power of Attorney, Revocation☐ Change of Correspondence Address☐ Terminal Disclaimer☐ Request for Refund☐ CD, Number of CD(s) \_\_\_\_\_

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☐ After Allowance communication  
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Samuel A. Kassatly

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# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 0

## Complete if Known

Application Number 09/488,470  
Filing Date 01/20/2000  
First Named Inventor SUNDARESAN, Neelakantan  
Examiner Name Hung Q. Pham  
Art Unit 2172  
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## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)			

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	-20** = 0	X \$18	= 0
Multiple Dependent	-3** = 0	X \$86	= 0
		\$290	= 0

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ ) 0

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Statement	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ ) 0

## SUBMITTED BY

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Date 12/27/2004

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**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Title:** "System and Method for Integrating On-Line User Ratings of  
Businesses with Search Engines"

**Appellant(s):** SUNDARESAN, Neelakantan

**Attorney Docket No.:** AM9-99-0199

**Serial No.:** 09/488,470

**Filed:** 01/20/2000

**Examiner:** Hung Q. Pham

**Art Unit:** 2172

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Board of Patent Appeals and Interferences

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**APPELLANT'S REPLY BRIEF TO EXAMINER'S ANSWER**

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AND INTERFERENCES**

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer dated November 3, 2004, to the Appeal Brief filed on August 4, 2004. Appellant presents the following arguments in response to the Examiner's Answer, and respectfully requests that the Board overturn the Examiner's finding of non-patentability.

## **ARGUMENTS**

In the Examiner's Answer, the Examiner basically reiterates the rejections made in the final office action of March 9, 2004, and further responds to the Appellant's arguments. As a result, Appellant will not repeat his prior arguments, but rather reasserts and incorporates all the arguments made in the previously Appeal Brief, and will further address the Examiner's new response to Appellant's arguments.

### **Issues on Appeal**

The three issues currently on appeal are listed below:

1. Whether claims 1, 9, 17, and 25 have been properly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.
2. Whether claims 1-2, 6-10, 14-18, 22-26, and 30-32 have been properly rejected under 35 U.S.C. 103(a) as being unpatentable over BizRate.com  
[<http://web.archive.org/web/19981205082910/http://www.bizrate.com/>] in view of Peters et al. [USP 5,893,098].
3. Whether claims 3-5, 11-13, 19-21, and 27-29 have been properly rejected under 35 U.S.C. 103(a) as being unpatentable over BizRate.com

[<http://web.archive.org/web/19981205082910/http://www.bizrate.com/>] in view of Peters et al. [USP 5,893,098] and Appellant Admitted Prior Art.

**First Issue: Claim Rejections under 35 USC § 112, First Paragraph**

**(a) First Ground**

In summary, claims 1, 9, 17, and 25 were rejected under 35 U.S.C. 112, first paragraph on the ground that "businesses that are selected from an unrestricted pool of merchants, and updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data," were not described in the specification.

In response to Appellant's arguments in the Appeal Brief, the Examiner indicates that: "If WWW is an unrestricted pool of merchant, and business is part of this pool as argued by appellant. FIG. 1 and the content of page 9 (not 8), lines 6-7 still does not have the description of selecting businesses from this unrestricted pool as claimed: businesses that are selected from an unrestricted pool of merchants."

Appellant respectfully submits that the Examiner's response does not constitute an argument but rather a conclusion. Appellant submits that since the merchants are located on the Internet (or WWW), and absent a clear indication to the contrary, it should be quite clear to a person of ordinary skill in the art that these Internet businesses are part of an

unrestricted pool of merchants. In other terms, the Internet merchants are not restricted to a selected (or preselected) group of merchants.

In other terms, a person of ordinary skill in the art would certainly find fallacy in the Examiner's logic that the Internet merchants are not part of an unrestricted pool of merchants. Such a logic would negate the essence of the Internet's open architecture, and is clearly erroneous.

#### (b)Second Ground

In further response to Appellant's arguments in the Appeal Brief, the Examiner indicates that: "without a full and clear disclosure of the invention in the manner prescribed by 35 U.S.C. 112, first paragraph, the obvious question is: how should it be understood that the indexing process of the rating data is a continuous, automatic process and the rating data are not indexed once and the process stops (which defeats the intent of the present invention)."

Appellant respectfully submits that the element addressed by the Examiner reads as follows:

"wherein updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

What the Examiner seems to imply is that it would be logical to imply from the present application that the data is indexed once and the process stops. In other terms, one user uses the system and then the system becomes obsolete.

Such an interpretation is an overly broad interpretation (or misunderstanding) of the present invention. The patent application refers to making the ratings available to future users (Page 5, lines 7-12). As a result, the rating of businesses does not stop with a single user, but rather, each user utilizes process 300 of FIGS. 3A and 3B, and thus the ratings of each new user is based on the cumulative ratings of the new rating from the new user and the existing ratings from the previous users. "Eventually, businesses with higher ratings will be ranked at the top of the search list, while business with lower ratings will be ranked lower." Pages 22, lines 17-19.

"In addition, the business rating system 10 is a self correcting system in that after a certain period of use, the users' interactive ratings could significantly affect the ranking of the businesses, and ultimately, lower ranked businesses stand lower chances of being browsed and thus selected. For example, if a user selects a site that had an initially high ranking and was not satisfied with the business, that user gives a poor rating to the business. If a reasonable number of users give a similarly poor rating to the same business, the business site will automatically ranked lower." Page 15, lines 7-14.

To conclude, Claims 1, 9, 17, and 25 satisfy 35 U.S.C. 112, first paragraph.

## **Second and Third Issues: Claim Rejections under 35 USC § 103**

### **(a) First Ground**

The Examiner indicates that: "Regarding the appellant's argument based on MPEP § 2143.03, the examiner respectfully traverses because all of the claimed limitations were taught by the prior art, and each of the terms of the claims were considered and matched. The following details below will support the examiner's assertion."

Appellant respectfully submits that the standard used by the Examiner is not in compliance with the legal requirements and authorities for the obviousness rejection. In particular, it is not sufficient that all the claimed limitations be matched with the prior art, but rather, the invention must be considered as a whole and not dissected in parts. Reference is made to MPEP 2141.02, and *In re Hirao*, 535 F.2d 67 at 69, 190 USPQ 15 at 17 (CCPA 1976).

### **(b) Second Ground**

The Examiner also indicates that: "In response to appellant's argument that there is no suggestion to combine the references ... In this case, indexing technique is a conventional method to speed up the search and organize data, and BizRate is a search engine with a local database to support the search. Therefore, an index mechanism is a requirement for BizRate system in order to search and organize data."

Appellant incorporates by reference the arguments made in the Appeal Brief, and further submits that the Examiner has selectively focused on the step of indexing but has not addressed the remaining limitations of



the claims. In other terms, the Examiner has selected the step of indexing, while ignoring the following steps associated with the indexing step:

"wherein the on-line ranking system indexes the rating data;  
an on-line ranking repository for storing the rating data indexed by the on-line ranking system; ...  
wherein updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

Appellant maintains that while indexing has been known, it is the combination of the above elements, in view of the invention as a whole, that is not disclosed or suggested by the prior art cited by the Examiner.

#### (c) Third Ground

The Examiner argues that: "Examiner respectfully traverses because the claimed, a self-correcting system could be distinguished over the prior art only by the special features of the system as in the body of the claim, not just only the term alone as bolded. Examiner agrees with appellant that **BizRate does not allow ALL the businesses on the WWW to be rated**, however, this means that BizRate has a selection of businesses, and this feature definitely meets the requirement of the claimed limitation: **businesses that are selected from an unrestricted pool of merchants.**"

Appellant does not profess to understand the Examiner's logic on how could BizRate concurrently limit its selection of merchants and at the same time provide a selection from an unrestricted pool of merchants. The key term here is "unrestricted" or "not restricted", for example by an intermediate company such as BizRate. It is the intention of the present

invention to allow an open, unrestricted, unlimited ranking based on the ratings from the consumers and not from intermediate companies, such as BizRate. The limitation of BizRate teaches away from the present invention in that the present invention eliminates potentially biased sources, such as an intermediary company that limits the ratings to best suit its financial needs.

(d) Fourth Ground

The Examiner indicates that: "As argued by appellant on page 15, line 28-page 16, line 9: The present system is automatic in that it does not require an intermediary company, such as BizRate, to select the merchants first and then take into account the customers' feedback ... Moreover, contrary to BizRate, the present invention opens up the entire pool of merchants all around the globe to being rated by users, whether these users are customers or not BizRate's survey of customers' opinions is limited to customers who made purchases ... Examiner respectfully points out that this argument does not relate to the claimed subject matter of claims 1, 9, 7 or 25, and therefore does not warrant consideration (i.e., the subject matter is not claimed)."

Appellant disagrees with the Examiner in that this feature is essential to the understanding and interpretation of the claims, and that the misinterpretation of this feature will lead to the misunderstanding of the present invention. Further, this feature enables the Examiner to properly interpret the claims in view of the problems it addresses.

In addition, considering claim 1, it recites the following limitation that has been apparently ignored or overlooked by the Examiner:

"automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

In the argument that has been summarily dismissed by the Examiner, Appellant attempts to explain two important terms: "automatically" and "unrestricted". These two terms help understand the invention as a whole, and should not be disregarded! Appellant respectfully requests the Board to interpret the whole invention in view of these two terms.

#### (e) Fifth Ground

In this section, the Examiner basically reiterates certain arguments, and the other arguments seem to be a restatement of certain excerpts from the patent application. As a result, it is not clear that Appellant needs to present any additional counter-argument beyond what has been presented earlier, in particular that the Examiner has not brought forth a new issue.

#### (f) (g) Sixth and Seventh Grounds

Sections (f) and (g) in the Examiner's Answer need to be combined as they relate to complementary arguments. Section (f) states in part that: "As argued by appellant on page 17, lines 6-10: Applicant submits that BizRate does not disclose "a result sorter ... Examiner respectfully traverses because of the following reasons: As shown on pages 3-5 is the technique of sorting query results generated by the search engine, based on the rating data and for generating ranked matches, and the missing of indexing and storing step could be supported by Peters as discussed above."

Section (g) states in part that: "Examiner respectfully traverses, as disclosed by BizRate, every merchant listed in BizRate has been rated based on 10 dimensions of service, which includes, Price, Product Selection, Product Information... as rating data (BizRate, pages 8 and 13-14). As on pages 22-26. As shown in page 1 ... As seen in pages 3-5 ..."

The foregoing Examiner's arguments are not clear, and therefore Appellant will not attempt to interpret these arguments for fear of misinterpretation. Appellant's limited choice is therefore to reproduce herein the arguments previously presented in the Appeal Brief:

"Though Peters discloses the intake of surveys, it does not output sorted query results based on the "rating data". Applicant submits that "rating data" is clearly defined in the claims as rating data that correlates higher quality matches to higher business satisfaction rating. Thus, Peters does not disclose rating data as claimed herein, and therefore the combination of Peters and BizRate, is not permissible because neither reference provides a suggestion or teaching of the missing features.

If however, such combination were permissible, it would still not yield the system and method as claimed herein, in that the combination would still lack the following element: "wherein updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

In addition, Peters does not disclose the remaining elements that are missing from BizRate (as presented earlier)."

Appellant respectfully requests the Board to consider all the arguments presented by Appellant in both the Appeal Brief and this Reply Brief.

To conclude, the rejected claims 1-32 are not obvious in view of the cited references, whether considered separately or in combination with

each other.

Respectfully submitted,

Date: December 27, 2004  
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Tel.: (408) 323-5111  
Fax: (408) 521-0111

A handwritten signature in black ink, appearing to read 'S. Kassatly', with a long horizontal flourish extending to the right.

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Samuel A. Kassatly  
Attorney for Appellant  
Reg. No. 32,247